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DISCUSSION PAPER

ON

ACCESSIBLE TRANSIT SERVICES

IN ONTARIO

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EXECUTIVE SUMMARY

Introduction

Access to public transportation services is a human rights issue. Transportation is fundamental to the capacity of most persons to function in society. Transit services facilitate integration into public and social life in our communities, as well as allow people to access work, and basic goods, services and facilities. However, certain persons who are protected under the Ontario *Human Rights Code* face significant barriers in using transit services. While the issue of transit accessibility is most often discussed in the context of persons with disabilities, it also impacts on others, such as older persons and families with young children.

Accessible Transit Services and Human Rights Law

The *Code* protects the right to equal treatment with respect to services, which includes public transit. The Supreme Court of Canada has affirmed the principle that society should be structured and designed for inclusiveness. This means that positive steps are needed to ensure equal participation for those who have experienced historical disadvantage and exclusion from society's benefits. This includes a right to accommodation with dignity to the point of undue hardship.

In the context of transit services, this means that the design and development of transit services should be based on the objective of maximum integration of all persons into society. As part of their duty to accommodate, transit providers have a legal obligation to provide accessible transit services. This includes both modifications to conventional systems to ensure maximum accessibility for all persons, and the creation and maintenance of paratransit systems.

The duty to accommodate is to the point of undue hardship. Undue hardship is assessed based on costs, outside sources of funding, and health and safety. When assessing cost implications, the cost must be assessed having regard to the entire

budget of the transit authority, and not solely the operating budget allotted to a particular part of the service or department, such as the paratransit service.

Transit Accessibility Survey

In July 1999, the Commission wrote to 25 Ontario municipalities and transit service providers to survey the accessibility of their transit systems. Each was asked about specific services to accommodate persons with disabilities, about the status of integrated transportation services, and any new initiatives being planned to accommodate patrons with disabilities. Nineteen authorities replied. Key themes emerging from the survey are highlighted below.

- **Planning tools:** Some survey respondents reported having planning tools, such as accessibility plans, although several of these plans are out of date. The planning tools showed a wide range of goals, as well as timeframes for the achievement of goals.
- **Accessibility standards:** Ontario has no legislation or technical or service benchmarks aimed at creating standards for accessibility. As a result, there was a wide range among survey respondents in terms of services, as well as of goals and objectives.
- **Goals and objectives:** While many survey respondents recognized that accessible transit services are fundamental to persons with disabilities, as well as to older persons and children, only a third expressed a commitment to both fully accessible and integrated systems. While some municipalities expressed confidence that systems would be accessible in the near or foreseeable future, others did not even project full accessibility.
- **Integration of conventional transit systems:** Survey respondents have undertaken a wide range of initiatives to make conventional services more accessible, including improved vehicle accessibility, community bus services and/or service routes, improved fixed bus routing and scheduling, accessibility guidelines and standards for future building initiatives, improved barrier removal at bus stops, accessible bus terminals, stations and platforms, and horizontal combination or

integration of local or regional programs. However, there remain many serious gaps in integrated conventional transit services.

- **Paratransit services:** Paratransit services vary greatly across the province in terms of eligibility criteria, services, and costs. Access is generally limited to patrons who are registered and meet pre-established eligibility requirements. Levels of access for persons with different types and severities of disabilities vary, particularly with respect to persons with ambulatory or temporary disabilities and persons with mental disabilities generally lack access to paratransit services. Registration fees and fares range widely across the province.
- **Special issues in the Greater Toronto Area:** Special issues arise in the Greater Toronto Area. While the TTC's subway car fleet is accessible to customers who use mobility devices, only ten of the sixty-nine subway stations are accessible. Because the bus system is so closely integrated with the subway, this has major repercussions to the accessibility of the entire service. As well, the accessibility of GO Transit is limited, with only 10% of the fleet fully accessible, and no targets for further increases in accessibility. Combined with the restrictiveness of the paratransit system, this leaves a gap in services for people who are neither able to access the conventional system, nor eligible to use the paratransit system.

Conclusions

Based on the human rights principles of integration and respect for dignity, the goal of any transit system should be to integrate its riders with disabilities into a primary transit system accessible to all patrons. For patrons who cannot access even a highly integrated primary or conventional system, a parallel system should provide service in a manner that is least intrusive and most respect dignity.

While significant efforts have been made to improve accessibility of transit services across the province, much more needs to be done. There are special concerns relating to the Greater Toronto Area in this regard. In general, the lack, in many cases, of up-to-date plans to resolve issues of access and inclusion, as well as of standards and benchmarks, is likely to hamper progress. Further, the exclusion of persons with certain

types disabilities, such as temporary disabilities and mental disabilities from access to paratransit services raises serious human rights concerns.

INTRODUCTION

This Paper will discuss transit services in Ontario in the context of human rights responsibilities and duties, and in the light of a survey on the accessibility of public transit conducted by the Ontario Human Rights Commission in 1999.

Access to public transportation services is a human rights issue. Significant barriers continue to exist to the use of transit services by certain persons who are protected under the Ontario *Human Rights Code*[1] (the "*Code*"). Section 1 of the *Code* guarantees the right to equal treatment in services, and this includes transit services. Where transit services are inaccessible, the result may be exclusion from participation in the community. The issue of accessibility of public transit is most often discussed in the context of persons with disabilities, but it also has an impact on others such as older persons, and families with young children.

With the restructuring across Ontario of the way in which public transit services are managed, there is a fresh opportunity to consider the human rights responsibilities of transit providers, and the possibilities for increasing the accessibility of transit services. This Paper is intended as a first step in encouraging such a discussion. The Commission welcomes written submissions on the issues raised in this *Discussion Paper*, from either individuals or organizations, with a deadline of June 30, 2001.

BACKGROUND

This Paper was developed to promote public discussion on the accessibility of local mass passenger transportation in Ontario ("transit services").[2] This initiative is part of the mandate of the Ontario Human Rights Commission ("OHRC") as set out at section

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1 R.S.0. 1990 c. H.19 as am.

2 Readers should note that this paper complements concurrent policy initiatives at the Ontario Human Rights Commission ("OHRC"), including discussion papers and guidelines on social and economic rights, disability and the rights of older persons.

29 of the *Code*. Specifically, the OHRC is mandated to engage in programs of public information and education, to promote awareness of human rights issues, to conduct research and to encourage public and municipal organizations to engage in programs that may alleviate tensions based on prohibited grounds of discrimination.

Transportation is fundamental to the capacity of most persons to function in society, and transit services are a cost effective and feasible way for people to get to work and to obtain access to basic goods, services and facilities. Transit services facilitate a level of integration into public and social life in our communities, and contribute to urban or regional planning through environmentally sound and efficient alternatives to private motor vehicles.

This Paper was initiated to address issues facing persons with disabilities. However, an OHRC survey of several transit service providers reveals that accessibility is also a fundamental issue for older persons, students and families with small children, and especially for those living in poverty. The *Code* grounds of disability, age and family status are therefore raised in this Paper.[3]

Several factors have converged to make this Paper important to the OHRC at this time. First, there have been major changes in the way that transit services are managed. These changes have created new or enhanced fiscal and operational pressures to develop, expand or rationalize services, including accessible services. As new plans and management are put into place, there are pressing needs to ensure that accessibility is built into the planning of new or reorganized services.

Second, the OHRC conducted a survey of twenty-five Ontario transit service providers in 1999 to assess the status of accessibility in the major regions of the Province of Ontario. During the same year, the OHRC conducted a consultation on disability and

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[3] Sections 1, 10 of the *Code*. Although the term "handicap" is used in the *Code*, "disability" is the current and preferable term.

accommodation issues, and several of the issues raised in this Paper also emerged as issues in that consultation.

Third, the Supreme Court of Canada rendered several critical decisions between 1997 and 2000 that create a new legal framework for the development and provision of accessible services by the public service. At the same time, the OHRC has received complaints against transit service providers from persons with disabilities, many of whom are concerned about accessibility and particularly about narrowing eligibility criteria for certain paratransit services.

Fourth, demographic trends are pointing to an aging society, which is increasingly reliant on accessible public services.[4] Many transit service providers noted that they serve an aging population and that their accessibility plans are influenced by this trend.

It is the view of the OHRC, having regard to the survey results and applicable legal standards, that there are pressing and real needs to improve transit services to make them more accessible. Most transit services surveyed are inaccessible to varying degrees, and not all transit service providers have plans to achieve full accessibility. Moreover, levels of access for persons with disabilities vary significantly between several transit services in Ontario, resulting in inconsistent services across the province.

The first part of the Paper provides general background on human rights issues surrounding transit services. Legal standards governing accommodation in this area are outlined, as well as trends in Canadian case law and the U.S. experience with the *Americans with Disabilities Act*.

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[4] OHRC, "Discrimination and Age: Human Rights Issues Facing Older Persons in Ontario" (Approved by the Commission on May 31, 2000), online: OHRC Homepage <http://www.ohrc.on.ca>.

The second part of the Paper summarizes various methods that have been used to achieve accessibility in transit services, including community buses and service routes, low floor buses, accessible subway systems, and paratransit systems.

In the third part of the Paper, the development in Ontario of accessible transit services is reviewed, with a discussion of the relationship between various levels of government and their historical responsibility for funding, and the impact of the recent transfer of funding to municipalities. This part also summarizes the key results of a 1999 survey conducted by the OHRC of twenty-five transit service providers about the accessibility of their transit services, their plans for integrated services, and for enhancing accessibility.

Finally, Part IV of the Paper presents conclusions and recommendations for future action based on Parts I and III.

PART I. TRANSIT AND HUMAN RIGHTS

1.1 INTRODUCTION

The Preamble of the *Code* emphasizes the importance of human rights in enabling each person to feel part of the community and to contribute fully to society. For many persons in Ontario, transit services are critical to their achieving these goals. Transit services are part of the public infrastructure, which provides access to basic goods and services, as well as to social and economic activities. Those who are unable to drive or to use common forms of transportation such as conventional buses are dependent on specialized transit services. Parents of young children, students and older persons are also highly dependent on transit services. For a low-income single parent with an infant, for example, a low floor bus may make the difference between participating in a community center program and isolation.

Public transit is a "service" within the meaning of section 1 of the *Code*. The duty to accommodate persons with disabilities is located in sections 11 and 17 of the *Code* and

has been repeatedly upheld by the Supreme Court of Canada under section 15 of the Canadian *Charter of Rights and Freedoms* (the "*Charter*").

Persons with physical disabilities are the principal focus of the accessibility measures undertaken by transit service providers, but patrons with sensory disabilities such as visual and hearing disabilities and those with learning disabilities also benefit. The OHRC survey showed that several transit service providers were very aware of the positive impact of accessible transit services on other persons in relation to grounds protected by the *Code*, including older persons and parents with children. As well, there are benefits for yet others: for example, an immigrant to Canada who is learning English may find it easier to understand a sign or print announcement than a spoken announcement over a public announcement system in a noisy station.

Advocates for the disability community have for several years been seeking assistance for persons with mental disabilities, who may experience unique difficulties in accessing public transit services. To date, the progress in this area has been very limited. A recent case in Ontario decided that there is no legal duty to accommodate such patrons by providing attendants. [5]

1.2 THE ONTARIO *HUMAN RIGHTS CODE*

Under the *Code*, everyone has the right to be free from discrimination in the social areas of employment, services, goods, facilities, housing, contracts and membership in trade and vocational associations. This right means that persons with disabilities[6], older persons and children, and parents with young children have the right to accessible transit services.

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[5] The Ontario Divisional Court has ruled that persons with disabilities who need assistance in order to use transit services because of cognitive disabilities (as opposed to physical or sensory disabilities) need personal attendants and not Wheel-Trans. Restrictions in eligibility criteria by Wheel-Trans are therefore not an infringement of s. 15 of the Canadian *Charter of Rights and Freedoms*. See *Cannella v. Toronto Transit Commission*, [1999] O.J. No. 2282 (leave to S.C.C. refused September 14, 2000, [2000] S.C.C.A. No. 31) [hereinafter "*Cannella*"].

[6] The terms "disability" and "person with a disability" are used throughout this document instead of "handicap" or "handicapped person." Although the term "handicap" is used in the *Code*, many people with disabilities prefer the term "disability".

Human rights law creates a right to accommodation with dignity. This fundamental right is part of a broader principle, namely that our society should be structured and designed for inclusiveness. This principle emphasizes barrier free design and equal participation of persons with varying levels of ability. For example, accessible, integrated conventional services will maximize the use of the conventional system[7] while minimizing the pressure on paratransit systems. Integrated conventional systems also enhance accessibility for many other persons, such as older persons who may have mobility difficulties or parents with young children.

Inclusive design and integration are also preferable to "modification of rules" or "barrier removal" which terms, although popular, assume that the *status quo* (usually designed by able-bodied persons largely for able-bodied persons) simply needs an adjustment to render it acceptable. In fact, inclusive design may involve an entirely different approach.[8]

Inclusive design means that positive steps are needed to ensure equal participation for those who have experienced historical disadvantage and exclusion from society's benefits. The right to equality can be breached by a failure to address needs related to disadvantage. As the Supreme Court of Canada has observed:

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[7] The conventional system is the transit system that is designed for the public through buses on fixed routes, subways and/or streetcars.

[8] In *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703, online: Supreme Court of Canada Homepage <http://www.lexum.umontreal.ca/csc-scc/en/index.html> [hereinafter "*Granovsky*"], the Supreme Court recognized that the primary focus in the disability analysis is on the inappropriate legislative or administrative response (or lack thereof) of the State (at par. 39). The Court states (at par. 33)

> *Section 15(1) ensures that governments may not, intentionally or* ***through a failure of appropriate accommodation****, stigmatize the underlying physical or mental impairment, or attribute functional limitations to the individual that the underlying physical or mental impairment does not entail, or fail to recognize the added burdens which persons with disabilities may encounter in achieving self-fulfillment in a world relentlessly oriented to the able-bodied.* [Emphasis added.]

Although in *Granovsky*, the focus was State action, similar principles apply to persons responsible for accommodation under human rights law.

> *[T]he principle that discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is widely accepted in the human rights field.*[9]

This principle applies to those who are responsible for managing public services. The design and development of transit systems as part of the public infrastructure should therefore be based on the objective of maximum integration of all persons into society. Paratransit systems should not, therefore, be viewed as a "special program" in the sense of section 14 of the *Code*. Rather, paratransit systems are appropriate responses to the duty to accommodate, which is imposed by the *Code* and confirmed by case law. Moreover, the duty to accommodate also means that conventional systems should be designed to assure maximum accessibility for all persons, including persons with disabilities.

The obligation to provide accessible transit services is part of the duty to accommodate, a duty that is shouldered by public authorities. Whether a particular accommodation need arises in the conventional system or the paratransit system, the legal obligation is the same and it is located in the duty to accommodate under sections 1, 11 and 17 of the *Code*. This duty is fundamental to human rights law in Canada, and it has a necessary consequence: the obligation to accommodate is not a voluntary exercise or "special program" within the meaning of sections 14 of the *Human Rights Code*. It is a legal duty.

This legal duty has to be discharged to the point of undue hardship. The assessment of undue hardship is limited in Ontario to three factors: cost, outside sources of funding, if any, and health and safety. When assessing the cost implications, the cost must be assessed having regard to the entire budget of the transit authority, and *not* the operating budget allotted to a particular part of the service or department such as the

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[9] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at para. 78, online: Supreme Court of Canada Homepage <http://www.lexum.umontreal.ca/csc-scc/en/index.html> [hereinafter "*Eldridge*"].

paratransit service. Health and safety concerns include those of persons with disabilities attempting to access public transit.

1.3 THE PROPOSED *ONTARIANS WITH DISABILITIES ACT* AND OTHER LEGISLATION

The *Charter* and the *Code* protect persons with disabilities from discrimination. They set out equality rights and rights to equal opportunities, services, and facilities. However, Ontario has no specific legislation that provides particular technical or service standards in any area of disability. With respect to transit services in particular, there are no specific standards to address barrier removal or services levels for conventional or paratransit systems.

In 1996, a Federal Task Force on Disability Issues recommended that the Federal Government enact a *Canadians with Disabilities Act*, and in Ontario, the government undertook in 1995 to enact an *Ontarians with Disabilities Act*. In a Resolution unanimously passed in the Ontario legislature on October 29, 1998, the Ontario government stated that the intended *Ontarians with Disabilities Act* would:

> *require the providers of goods, services and facilities to the public to ensure that their goods, services, and facilities are fully usable by persons with disabilities, and that they are designed to reasonably accommodate the needs of persons with disabilities ... [p]roviders of these goods, services, and facilities should be required to devise and implement detailed plans to remove existing barriers within legislated timetables.*[10]

A Bill was introduced in the provincial legislature - the *Ontarians with Disabilities Act* in October 1998. The Bill did not become law. The Minister of Citizenship, Culture and Recreation has publicly undertaken to introduce a new ODA.

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[10] The Resolution can be located in "ODA Resolution Unanimously Passed by the Ontario Legislature October 29, 1998" as found on ODA Committee Homepage <http://www.odacommittee.net>.

Other relevant legislation relevant to transit services includes:

- *Ontario Building Code* (sets standards for making buildings accessible)
- *Highway Traffic Act* (regulates the safety standards on accessible transit)
- *Blind Person's Rights Act* (protects individuals from discrimination because of their use of guide dogs and/or canes)
- *Public Transportation and Highway Improvement Act* (allows the Minister of Transportation to enter into agreements with private firms to develop, design maintain, test or supply all or part of transit vehicles).

1.4 CASE LAW

Given the absence of specific legislation or standards pertaining to disability rights and transit services in Ontario, it is not surprising that there are relatively few civil or human rights cases involving the provision of accessible transit. Some cases have dealt with issues relating to paratransit services, particularly with respect to attempts by transit service providers to enforce stricter paratransit eligibility requirements (see *Coutu v. Société de Transport de la Communauté Urbaine de Montréal* and *Cannella et al. v. Toronto Transit Commission and the City of Toronto*).[11] These decisions are reflective of the trend in lower courts to adopt restrictive approaches to equality cases involving public transit. This is a noticeable trend generally in Canadian cases where litigants seek to use s. 15 *Charter* rights or equivalent statutory rights to enforce social or economic rights for a group.[12]

However, a 1997 decision of the Supreme Court of Canada may signal a shift. In *Eldridge*, the Supreme Court of Canada held that the government of British Columbia

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11 *Coutu v. Société de Transport de la Communauté Urbaine de Montréal*, [1995] 24 C.H.R.R. D/489, T.D.P.Q.; *Cannella, supra*, note 5.

12 Ontario Human Rights Commission, *Human Rights Commissions and Economic and Social Rights* (Research Paper, February 2000) [unpublished].

was required to provide sign language interpreters for hospital patients. The Court held that public facilities and services such as hospitals must be accessible if people with disabilities are to enjoy equal protection under the law. *Eldridge* is a clear signal that there is a legal obligation to take positive steps to design systems for inclusiveness, thereby ensuring that people with disabilities can fully access public services and facilities. *Eldridge* represents a milestone in the approach to Canadian disability rights law and one that is, in the long term, likely to have a significant and progressive impact.

Eldridge should be read in the context of other, more recent decisions of the Supreme Court of Canada such as *Eaton*[13], *B.C. Firefighters*[14], *Mercier*[15], *Granovsky and Grismer*[16]. The implications of these cases for persons with disabilities in the context of public services such as transit services can be briefly summarized as follows:

- systems should be designed to be inclusive and to reflect all members of society;
- integrated systems are preferable to segregated ones;
- human rights protections should focus on the social response to the disability rather than on the disability itself, meaning that the details of the actual condition are less important than the barriers raised by the myths and stereotypes of society regarding it; and
- public service providers have an obligation to ensure that services are accessible to everyone, and not to permit practices or other barriers that exclude persons with disabilities.

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13 *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241, online: Supreme Court of Canada Homepage <http://www.lexum.umontreal.ca/csc-scc/en/index.html> [hereinafter "*Eaton*"].

14 *British Columbia (Public Service Employee Relations Commission) v. B.S.G.S.E.U.*, [1999] 3 S.C.R. 3, online: Supreme Court of Canada Homepage <http://www.lexum.umontreal.ca/csc-scc/en/index.html> [hereinafter "*BC Firefighters*"].

15 *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2000] 1 S.C.R. 665, online: Supreme Court of Canada Homepage <http://www.lexum.umontreal.ca/csc-scc/en/index.html> [hereinafter "*Mercier*"].

16 *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868, online: Supreme Court of Canada Homepage <http://www.lexum.umontreal.ca/csc-scc/en/index.html> [hereinafter "*Grismer*"].

1.5 THE *AMERICANS WITH DISABILITIES ACT, 1990* (ADA)

Disability Law in Transportation 1960-1990:

In the United States, as early as the middle 1960's transit systems used paratransit vehicles to make their service accessible. The *Urban Mass Transportation Act* (1964), the *Federal-Aid Highway Act* (1973), and the *Surface Transportation Assistance Act* (1982), recommended minimum criteria for ensuring that transit systems were accessible to patrons with disabilities. However, none of these acts required that access be equal or service comparable to that offered by conventional transit.[17]

Throughout the 1980's, individuals committed to protecting the interests of people with disabilities sued transit service providers for failing to provide equal access to services. In the earliest cases, claimants contended that the use of public funds to finance services that could be enjoyed only by the able-bodied infringed on the civil rights of those with disabilities.[18] In 1981, the Department of Transportation (DOT) allowed local transit agencies to limit their spending on paratransit services to 3% of total operating costs. This precipitated a new series of lawsuits all charging that the 3% spending cap was arbitrarily and capriciously applied.[19] Further, the cap infringed on the constitutional rights of those with disabilities by allowing agencies a "safe harbour" for not complying fully with DOT regulations. In most instances, plaintiffs found little immediate success, but through appeals and anti-discrimination lawsuits against transit service providers, the issues of accessible transit, mainstreaming, and the rights of the disabled community came to the forefront of the political stage.

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17 Paul Dempsey, "The Civil Rights of the Handicapped in Transportation: The ADA and Related Legislation" *Transportation Law Journal*. Winter 1991 19n2. pp. 309-333.

18 See *Eastern Paralyzed Veteran's Association, Inc., v. Metropolitan Transportation Authority, 103Misc. 2d 933, 426 N.Y.S. 2.d 406 (1980).*

19 See *Americans Disabled for Accessible Public Transportation, 881 F.2d 1184 (1989).*

Signed into law on July 26, 1990, the *Americans with Disabilities Act* (ADA) is the reply to the decade-long demand for comprehensive civil rights protections for people with disabilities. Divided into five titles, the ADA covers employment (Title I), public services (Title II), public accommodations (Title III), telecommunications (Title IV), and protects individuals from threats or reprisals for asserting their rights under the ADA (Title V). This paper addresses only specific provisions of Title II.

1.5.1 The ADA: Title II

Title II mandates that all conventional public and private transportation vehicles and facilities be barrier free and that public transit operators provide paratransit services comparable in quality to that of conventional fixed route systems. Title II, s.10, which deals specifically with public transportation accommodations, includes guidelines for making vehicles, stations, bus stops, maps, and schedules accessible to all people. Some key provisions include:

- New vehicles purchased after August 1990 must have lifts, fold-up seats, ramps, slip-resistant aisles and other facilities for patrons with disabilities;
- Systems that buy used vehicles must make "good faith efforts" to find used accessible vehicles and must document that effort.
- Re-manufactured vehicles purchased after August 1990 must be made accessible, to the maximum extent possible given their age if the vehicle's expected useful life is more than five years.
- Paratransit services must be offered during the same days and hours as fixed-route service and must cover the area ¾ mile on each side of the fixed-route boundaries. (Transit providers had to submit plans for their paratransit service by January 1992 and had until January 1997 to implement their plans.)
- Restrictions on the number of trips a person can make, waiting lists, and other practices that limit the accessibility of paratransit service are prohibited.

- Providers with overlapping services areas must offer coordinated paratransit service.[20]

Although the ADA does not prescribe specific eligibility requirements, it recommends that transit service providers consider persons with temporary and permanent disabilities as well as the aged when establishing their criteria for paratransit users. As well, the ADA makes receipt of federal funding conditional on an agency's compliance with its regulations. Recognizing the high cost of compliance with its guidelines, however, the Federal Transit Administration allowed providers to file waivers if compliance costs were prohibitive and their transit systems were unable to meet all service criteria by the 1997 deadline.[21]

Critics of the ADA worry that it burdens transit agencies with high costs for retrofitting and/or purchasing accessible vehicles. Further, the ADA also forces small, rural transit agencies with limited resources and personnel to comply with its standards when to do so would be economically unfeasible. However, despite these contentions, by allowing transit service providers to coordinate services, the ADA creates a mechanism for smaller systems to pool resources in order to offer service that complies with ADA regulations.

The passage of this legislation, with its clear and enforceable standards for transit services, has provided a major impetus in the U.S. towards accessible transit.

PART II. METHODS OF ACHIEVING ACCESSIBILITY

The following sections will provide background information about common forms of accommodation in transit services.

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20 Dempsey, *supra*, note 17.

21 *Ibid.*

There are two basic strategies for meeting the duty to accommodate and achieving accessible transit services. The first relates to the creation of a parallel or segregated system for persons who are unable to use the conventional transit system. The second is to enhance the accessibility of the conventional transit system. Transit services require both strategies to address accessibility effectively.

Making the conventional system more accessible to persons with disabilities is a way of "integrating" the system. This is a very attractive strategy for a number of reasons. First, it is a general principle that integrating persons with disabilities is preferable to segregation. Second, there is a growing population of older persons and a growing demand on paratransit. There is limited capacity in the paratransit systems to meet these demands because of their high expense. Practically speaking, a more integrated conventional system can significantly reduce demand on the paratransit system.[22]

Integration is also much more cost effective than building parallel systems, although it is inevitable that there will be times when parallel or paratransit services are the only option.

2.1 COMMUNITY BUSES AND SERVICE ROUTES

First implemented in Boras, Sweden in 1983, service routes bring fixed-route transit as close as possible to the residences and destinations of passengers. Designed by combining conventional fixed-routes and the most often traveled paratransit routes, service routes employ smaller vehicles in order to access narrower streets. These routes minimize walking to and from bus stops. In addition, many transit systems allow patrons to flag down buses along the route and/or allow departing passengers to request small diversions. Bus schedules are designed to meet community needs and include driver-assistance time.[23]

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[22] Ottawa-Carleton's OC Transpo estimates that an integrated low floor bus fleet with improved routing will alleviate about 30% of passenger demand on the paratransit system.

[23] Transportation Research Board, National Research Council, *Transit Operation for Individuals with Disabilities* (Washington, D.C.: National Academy Press, 1995), p. 43.

2.2 LOW FLOOR BUSES

Low floor buses enable passengers with disabilities as well as the elderly and parents with small children, who might otherwise have difficulty boarding conventional-height transit, to have access to fixed-route service. Low floor buses have maximum floor heights of 12.6 to 14 inches (reducible to 3 to 5 inches with a kneeling feature) from the front to back doors. The 40-foot low floor buses found in many parts of North America have a 3-step walk-up beyond the backdoor that rises to between 30 and 35 inches above the street to accommodate the rear axle and engine. [24] 'True' low floors have uniform heights throughout their length.

Depending on the particular model, low floor buses can accommodate up to two wheelchairs and/or scooters.

Low floor buses have been found to increase transit use. The Calgary Transit Advisory Committee tested 22-passenger low floors down a shuttle route and observed a 19 percent increase in ridership.[25] However, according to the Toronto Transit Commission, additional passenger weight on low floors during peak-hours of operation reduces their floor heights to dangerously low levels above the street. Low floors are also criticized because they reduce seating capacity from approximately 40 to 28 passengers and can manage approach and departure angles of just 9° as compared to 10°-11°, making their use on high-traffic, unevenly graded routes difficult.[26]

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[24] *Ibid.* at p. 32.

[25] *Ibid.*

[26] *Ibid.*

2.3 ACCESSIBLE SUBWAY SYSTEMS

In cities with a subway, the accessibility of the subway system is fundamental to the accessibility of the transit system overall. Accommodations required for accessibility depend first and foremost on accessible subway stations and cars.

Full accessibility for stations means elevator access between subway, bus and street level platforms. Basic accessibility for subway cars means that wheelchairs and other mobility devices can move safely and independently from the platform to the car. Additional accessibility features appear on the TTC's "T-1 cars", namely wider doors, tie-downs and special seating areas. It should be noted that accessibility needs will differ for the ambulatory as opposed to the non-ambulatory disabled. For example, functioning escalators, moving in both directions, will often be crucial for ambulatory disabled passengers.

2.4 PARATRANSIT SERVICES

Paratransit differs from the "integrated approach" used in some countries where all conventional transit buses have been equipped with wheelchair lifts in order to accommodate disabled customers.[27] Paratransit is a segregated system for the sole or principal use of patrons with mobility disabilities. While segregated systems are generally not a preferred option, it is recognized that some patrons will be unable to use even a well-integrated conventional system and that some form of paratransit service is necessary.

Paratransit services are provided by specialized, wheelchair accessible vans or mini-buses on a pre-booked basis. These services are sometimes provided or supplemented by subcontractors such as taxis and not-for-profit organizations that provide pre-booked trips on wheelchair accessible vehicles.

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[27] Report of *The Hamilton Street Railway Company*, to the Ontario Human Rights Commission (5 August 1999).

Paratransit services are generally restricted to patrons who need door-to-door service and are unable to use conventional transit systems. Access is therefore restricted by eligibility criteria related to mobility, *e.g.*, functional ability to move in the community. In Ontario, these criteria differ somewhat across the province. They are usually established by advisory or other committees working with transit service providers and communities. Many impose registration and additional fees per ride in order to generate revenues to finance operations and to meet growing demand and costs.

PART III. ACCESSIBLE TRANSIT IN ONTARIO

3.1 JURISDICTION AND ADMINISTRATION

The Federal Government has jurisdiction over inter-provincial transportation services and sets new vehicle standards, while provincial legislatures have authority over intra-provincial bus and train lines. The province, through the Ministry of Transportation, reviews contracts and proposed service provisions, and ensures the safety standards of vehicles. Local municipalities have jurisdiction over taxis and limousines, and are primarily responsible for transit services, including paratransit services.

In areas where several transportation modes converge, it is not unusual to find several authorities with jurisdiction over a single area. For example, Union Station in Toronto is the hub of Toronto's passenger train service, which is federally regulated. It is also a station for the GO Train service, which is operated by the Greater Toronto Services Board ("GTSB"), and for the subway, which is operated by the Toronto Transit Commission ("TTC").

Today in Ontario, municipalities organize transit systems or delegate this function. There are some coordinated efforts to merge systems and to create efficiencies between transit services. As well several small-scale partnerships exist in Ontario between municipal authorities and not-for-profit or other organizations such as

hospitals, called community transportation action programs ("CTAP's"). CTAPS receive small amounts of government funding to support these partnership initiatives.

Many transit service providers in Ontario maintain the legal responsibility for administration of transit services within the municipal structure. [28] This is done either through direct delivery or by subcontracting specialized services to private not-for profit entities.[29] In other regions, the responsibility for the administration of transit services has been delegated to a separate legal entity with statutory powers, such as a transit commission. The TTC and the London Transit Commission are examples of this structure.

3.2 FUNDING FOR ACCESSIBLE TRANSIT

Historically, the province contributed significant funds "to assist municipalities to provide service to those individuals who are unable to climb or descend stairs or walk 175 m".[30] Provincial funding used to be the largest source of both capital and operating funds for transit services.[31] Transit service providers received a percentage of capital costs from the province, which were then subdivided into basic operating costs and passenger-based costs. When purchasing vehicles, the province subsidized a percentage of eligible operating costs.

Between 1992 and 1999, the government operating subsidy for conventional transit declined. By 1999 all operational funding for transit became a municipal responsibility. For example, the City of Toronto is the only source of operating subsidies for the TTC, while passenger revenues now constitute about 80% of the TTC's operating budget.

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28 The Town of Markham, for example.

29 The D.A.R.T.S. service in Hamilton, for example.

30 Canadian Urban Transit Association, *Specialized Transit Services Factbook* (1993), at p. 6.

31 *Ibid.* For example, about 50% of operating funds and 75% of capital funds came from the province in the early 1990's.

The City of Toronto is also the TTC's only source of capital funds.[32] Documents recently provided by the TTC indicate that 96% of Wheel-Trans funding comes from the City of Toronto and 4% from registration fees and fares.[33]

In August 1996, the Ministries of Transportation, Health, Community and Social Services, and Education and Training along with the Ministry of Citizenship, Culture, and Recreation partnered to form the Community Transportation Action Program (CTAP). The joint initiative provides transitional assistance to communities in order to coordinate services. The project's aim is to maximize resources while addressing transportation problems. The total amount of money available was $3 m with grants to ten reported municipalities ranging between $10,000 and $40,000. The idea behind CTAP appears to be based on the much more extensive (but unaffiliated) U.S. program of the same name, which is involved in restructuring, coordination and funding of transit services.[34]

3.3 HISTORY OF ACCESSIBLE TRANSIT SERVICES IN ONTARIO

In the1970s, several Ontario authorities began to introduce segregated services to accommodate passengers whose disabilities did not permit them to use conventional transit systems.[35] These paratransit services offered planned trips by accessible lift-equipped vans with trained drivers offering door-to-door service. This service is now supplemented in many regions with taxi services, community buses and/or service routes.

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[32] Pleadings of the Toronto Transit Commission in *Odell et al. v. TTC* (Board of Inquiry (Human Rights) No. BOI-0336/336/337/338/340-00).

[33] *Ibid.* at para. 5.

[34] See CTAP official website, <http://www.ctap.gov.on.ca>and related links. While comparisons to the U.S. program are difficult because the large programs are not exclusively dedicated to transit funding, the U.S. programs with specific funding for public transportation exceed $1 billion U.S. dollars.

[35] Turvey & O'Brien, "A "Family of Services" Approach to Special Needs Transit" presented to UITP-International Union (Association) of Public Transport, 53rd Congress and City Transport Exhibition for the Regional Municipality of Hamilton-Wentworth (Toronto, 26 May 1999) at 1. Kingston Transit reports that the "Kingston Access Bus" was established in 1967.

In 1981, during the International Year of the Disabled Person, the Ontario Ministry of Transportation began providing a 75% subsidy to transit service providers to improve *conventional* mass transit systems for ambulatory disabled persons. Ambulatory disabled persons were defined as persons who were able to walk with varying degrees of difficulty.[36]

In the Throne Speech of April 28, 1987, the government announced the expansion of eligibility requirements from "inability to board ... to persons unable to use."[37] In 1989, the standard was set to provide funding for those who were physically unable to climb or descend stairs on conventional transit systems or unable to walk a distance of 175 metres.

In 1993, there were several initiatives to improve accessibility in Ontario. Municipalities were required to provide full accessibility transit plans to the province. All new transit vehicles leased or purchased after July 1, 1993 had to be low floor and/or equipped with Easier Access features. Coupled with provincial assistance to finance accessible transit, these initiatives resulted in significant improvements. In 1979, just five of Ontario's municipalities had transit systems that could accommodate passengers with physical disabilities. By 1993, 93 of 94 municipalities were reported to have such systems.[38]

These improvements generated a significant reported rise in demand for rides on paratransit systems. In some municipalities, there was also a high rate of inability to accommodate the growing requests for rides.

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[36] Ontario Transportation Association, *A Report to the Ministry of Transportation Task Force on Improved Accessibility to Conventional Transit Services for Frail and Ambulatory Disabled Persons* (1998) at p. 43.

[37] Ontario Ministry of Transportation and Communications, Directive B-9 as found in Ontario Transportation Association, *A Report to the Ministry of Transportation Task Force on Improved Accessibility to Conventional Transit Services for Frail and Ambulatory Disabled Persons*, 1998, p. 43.

[38] *Specialized Transit Services Factbook 1993*, *supra* note 30 at p.5.

This created pressure to enhance the integration of conventional systems so that more persons with disabilities could use those systems and relieve pressure on paratransit. In the mid to late 1990s, these pressures were compounded by a sharp decline of direct funding for accessible transit from the Province. The result was that transit systems became entirely reliant on municipal funding and ridership revenues as provincial funding was eliminated altogether.

3.4 TRANSIT ACCESSIBILITY SURVEY

In July 1999, the OHRC wrote to twenty-five Ontario municipalities and transit service providers to survey the accessibility of their transit systems.[39] Each one was asked about specific services to accommodate persons with disabilities, about the status of integrated transportation systems and any new initiatives being planned to accommodate patrons with disabilities. Nineteen authorities replied ("survey respondents").[40]

This Paper does not seek to review comprehensively the input of each survey respondent in detail, but rather seeks to identify major trends and issues relating to human rights issues, and to provide examples or illustrations of best practices or areas that appear to require improvement. It is based on the information provided by survey respondents and, in some cases, reports or studies that have been brought to the attention of the OHRC.

The following sections will discuss in some detail the outcomes of the survey responses. It is not the OHRC's intention to lay blame or criticize any transit authority or

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[39] The following authorities were contacted: Ajax Transit, Barrie Transit, Brampton Transit, Burlington Transit, GO Transit, Guelph Transit, The Hamilton Street Railway Company, Kingston Transit, Kitchener Transit, London Transit Commission, Town of Markham, Mississauga Transit, Niagara Transit, Oakville Transit, Oshawa Transit, Ottawa-Carlton Regional Transit Commission, Peterborough Transit, Pickering Transit, St. Catharines Transit, Sudbury Transit, Thunder Bay Transit, Timmins Transit, Toronto Transit Commission, Transit Windsor, Whitby Transit.

[40] Unfortunately, the following authorities did not respond: Ajax Transit, Barrie Transit, Brampton Transit, Oakville Transit, Oshawa Transit, Pickering Transit; this report therefore can not assess or offer any comment on their progress in addressing the transit needs of persons with disabilities.

level of government. However, the survey shows a need to underscore several real gaps in the accessibility of Ontario's transit services and to suggest constructive options. It is hoped that these options may encourage both political will and operational capacity to comply with human rights laws and standards, while supporting transit service providers in the complex business of providing accessible services to the people of this Province.

3.4.1 Major Themes

Ontario has no legislation or technical or service benchmarks aimed at creating industry standards for accessibility in the broader public sector. In the absence of such service standards, there was a wide range among the survey respondents in terms, not only of actual services, but also of goals and objectives. Nevertheless, many survey respondents recognized that accessible transit services are fundamental to persons with disabilities and to participation in community life, as well as in society as a whole.

Many survey respondents recognized the importance of accessible systems to older persons and to children as well as to persons with disabilities.[41] The implications of demographic trends related to an aging population were a concern for several survey respondents.

Only a third of survey respondents expressed a commitment to both fully accessible *and* integrated transit systems. Windsor, Thunder Bay, Peterborough, Burlington, Ottawa and London did identify full accessibility as an objective, with some financial caveats. In a submission to the Government of Ontario, the London Transit Commission identified the importance of removing barriers faced by persons with disabilities. It stated that "municipalities are to be encouraged and supported to continue to move toward providing an accessible conventional transit service, in addition to providing a quality specialized (paratransit) service"[42]. While some municipalities expressed confidence

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[41] Children were specifically mentioned by Markham, for example.

[42] Letter to Berwyn Sheer, Parliamentary Assistant to Ministry of Citizenship, Culture and Recreation, 28 August 28 1999.

that systems would be accessible in the near or foreseeable future, others did not even project full accessibility.

Some authorities described their services for persons with disabilities in generic terms. For example, Kitchener Transit described its objective as "reliable pick-up and return service" while St. Catharines' accessible transit objective is to ensure that patrons are able to "travel from their homes to bus stops in a barrier-free environment." The Town of Markham wrote about the "dilemma" of how to achieve full accessibility. Sudbury and Timmins provided information about improvements in accessibility but did not disclose plans to achieve full accessibility.

Some survey respondents reported having planning tools, such as accessibility plans, a requirement that was stipulated by the Province of Ontario in 1993.

The cost of achieving accessibility was a theme mentioned by several survey respondents. The costs related to accessibility initiatives to make infrastructure and vehicles accessible are significant.[43] Population size, coupled with an aging population, has heightened the need to accelerate accessibility projects as a way of meeting demand. Some of the survey respondents attributed delays or limited accessibility targets to lack of funding or to the fact that dedicated provincial funding to implement accessibility plans is no longer available. Seven survey respondents linked these changes in funding to the fact that accessibility initiatives have been affected, delayed or abandoned altogether.[44]

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[43] The TTC reports estimated costs of the complete accessibility package to the TTC to be $781 m.

[44] For example, submissions from the TTC, Peterborough, Kingston, the London Transit Commission and Transit Windsor refer to the elimination of capital and operating assistance from the Province as factors that affect the pace of acquisition of low floor buses, or that prevent integration. Others, such as the St. Catharines Transit Commission refer to the financial pressures as the reason that certain services such as Mobility Niagara were to be discontinued. Burlington reported that one initiative in its Plan was deferred due to lack of funding.

3.4.2 Demographics

Many survey respondents indicated that senior citizens and persons with disabilities form a significant or growing proportion of the population. This creates an increased demand for improved accessibility.

In the City of Hamilton, for example, the historical industrial base has created a relatively high population of persons with physical disabilities in a region with significant geographic barriers. Fifteen per cent of the population is age 65 or more. The Hamilton Street Railway Company reports that 8,000 persons, or 1.7% of the regional population, are registered for specialized services. This may be contrasted with the TTC's Wheel-Trans registrant base, which is about 22,000 people (of whom 70% are seniors) 0.6% of the population served by the TTC.

Similarly, Niagara and Burlington reported a higher proportion of older persons requiring accessible services.

3.4.3 Planning Tools

In *Eldridge*, the Supreme Court of Canada indicated that public authorities are required to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public. The planning tools shared by the transit authorities outline the positive steps transit services intend to take to promote accessibility. Many of the plans shared by transit service providers show commitment to improve and some progress, but others do not. As part of the Ministry of Transportation's 1993 Policy Directive, all municipalities were required to submit "full accessibility plans" in that year. Since that time, many authorities have reviewed their services and embarked on reviews or projects for coordinated services in order to promote and enhance accessibility. However, several of these plans date from 1993-4 and need to be updated. The lack of benchmarks has an impact on the consistency, service levels and standards set out in the various plans.

Transit Accessibility Plans ("TAPS") or similar planning tools were reported by several survey respondents, with a wide range of goals, as well as timeframes for achieving the identified goals.[45] Commitments to accessibility projects are in some cases qualified by the words "where funds permit" or by similar language. For example, Thunder Bay qualified its plans to have a fully accessible transit fleet by the words "depending on budgetary allowances".

There was little accountability mentioned in survey responses for failing to meet targets, presumably because of the lack of control over budgets from year to year. As a result, despite good intentions, there is no incentive to meet, or real consequence for not meeting, accessibility objectives. There is, consequently, little real accountability for or incentive to municipalities to dedicate funds to accessible transit, especially at a time when many needed services are competing for resources.

Many plans do require approval and periodic review by municipal councils, but no general reporting to the greater public.[46] These factors limit transparency and public awareness of progress.

Even without any legal oversight of accessibility implementation plans, most authorities have established a range of committees and advisory bodies to oversee accessible transit systems:

- Kingston Transit has established an Access Advisory Committee to develop a full accessibility implementation plan.

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[45] The following municipalities/authorities submitted or made reference to existing or current TAPS and/or subsequent reports or reviews of their services as part of the OHRC survey. These were Burlington "Full Accessibility Implementation Plan" (1993); "Community Transportation Action Program" (1999); Markham "Transit Accessibility Implementation Plan (1993); OC Transpo, "OC Transpo Comprehensive Review "The Way Ahead: Becoming the Best of the Best"" (1999); TTC "Five Year Accessible Transit Report" (1997); Hamilton "A 'Family of Service' Approach to Special Needs Transit" (1999); Kingston "Full Accessibility Implementation Plan" (1993); Windsor "Full Accessibility Plan" (1994).

[46] Although several authorities did post their reports or plans on the Web, such as OC Transpo and TTC.

- Responsibility for GO Transit has been transferred from the Province to the Greater Toronto Services Board (GTSB). Accessibility plans were to be determined by the GTSB's policy direction subject to funding availability in the year 2000.
- The London Community Transportation Brokerage was created to address a variety of transportation services.
- Ottawa-Carleton (OC Transpo) has a steering committee, which has assisted in the development of its recent transit review.
- The TTC Task Force on Accessible Transportation developed a 5-year Accessible Transit Plan in 1997 to address new and increased services and improved service efficiencies.

The creation of planning tools that are current and set clear goals and timelines is a first step towards achieving a fully accessible system. As well, without structures of accountability for the implementation of plans, progress is likely to be slow.

3.4.4 Integration Of Conventional Transit Services

As discussed earlier, human rights principles indicate that public services, such as transit services, should be structured for inclusiveness, in preference to modifying the rules or removing barriers while maintaining the status quo. Few survey respondents identified integration of transportation systems as a planning priority, with some notable exceptions such as London and Ottawa-Carleton. Nonetheless, survey respondents have undertaken a wide range of initiatives to make conventional systems more accessible. For example, the TTC reports improvements in lighting on subways and buses, and public announcements of bus and subway stops. Other features, such as warning lights in the doorways of subway cars and chimes may also assist individuals with hearing and sight impairments.

Typically, transit service providers developed accessibility initiatives in consultation with community organizations and users. Survey respondents reported on using a variety or combinations of the following strategies:

- Improved vehicle accessibility;[47]
- Community bus services and/or service routes;
- Improved fixed bus routing and scheduling;[48]
- Accessibility guidelines and standards for future building initiatives;
- Improved barrier removal at bus stops, such as snow removal;
- Accessible bus terminals, stations and platforms;[49] and
- Combining or integrating local or regional services horizontally to achieve coordinated programs, reduce costs and improve responsiveness.[50]

Ottawa-Carleton and the Hamilton Street Railway Company have an interesting "family of services" approach to meeting the needs of a wide range of customers.[51] London has adopted a range of overlapping and complementary services to achieve efficiencies. This approach appears to offer flexibility for patrons, lowered costs across the system and improved integration of the conventional system. OC Transpo has released plans to introduce a fixed route paratransit bus system, which would significantly increase the integration of the conventional system,[52] although it would not address the needs of those who, by reason of their disability, require door-to-door service.

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[47] Low floor wheelchair accessible buses, lift-equipped buses, kneeling features or other easier access features, low floor articulated buses; subway cars that are barrier-free i.e. wide doors, improved tie-downs in subway cars, removal of central poles that impede mobility, *etc.*

[48] Respondents mentioned strategies to maximize use of accessible bus services on a regular basis. Some have designated main bus routes as "fully accessible" or 80% accessible, as determined by factors such as passenger requests, proximity to major departure or destination locations for persons with disabilities and to seniors, and an analysis of the trip patterns of the paratransit service.

[49] Guelph reported its plan that new bus shelters will be wheelchair accessible.

[50] *E.g.*, In August 2000 the York Region Transit Implementation Project announced consultations on the integration of their five municipal conventional transit systems and seven special needs operations into a single system.

[51] In Hamilton, these include wheelchair accessible vans, taxi-livery services, and low floor buses and taxi scrip services. In Ottawa-Carleton they include community buses, route deviation services, local routes and accessible sedans and taxis.

[52] OC Transpo "The Way Ahead: Becoming the Best of the Best" (Final Report, February 1999), online: OC Transpo Homepage <http//:www.octranspo.com/pi/KPMG_final_report_C_3.htm>.

In 1989, following in the steps of the Ottawa-Carleton, St. Catharines, Hamilton, and Oakville transit commissions, the TTC experimented with service routes, using them in place of some fixed-routes during off-peak hours. A TTC survey conducted at that time found that 12 percent of service route passengers were paratransit users and as many as an additional 7 percent might also have been paratransit patrons. Using the 12 percent figure, a U.S study shows that the cost of transporting paratransit riders via service routes was $33/trip versus $30/trip on paratransit; however, at 19 percent, service routes reduced costs to just $21/trip.[53]

Service routes appear both useful and economical in Ontario's larger cities during off-peak hours. However, their utility during rush hours in these locations remains uncertain. Given the volume of passengers and other traffic, passenger-requested diversions and flag-stop policies may prove both unsafe and unreasonable during peak-hour service. In Toronto, for example, the use of service routes has been restricted to four community bus routes that serve seniors and persons with disabilities who wish to have access to particular facilities. Community buses are used in several areas in Ontario, but appear to be less popular as transit providers move towards fully accessible low floor buses on conventional routes.[54]

Despite these and other positive steps, there remain many serious gaps in integrated conventional transit services. As discussed in the following section, only a fraction of the TTC subway system and bus routes is currently accessible. Only ten of the TTC's 69 subway stations and one fifth of TTC bus routes are partly or fully accessible. There are only four community bus routes in operation at this time. None of the 250 streetcars are accessible and there are no plans to make them accessible.[55] The TTC's

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[53] Transportation Research Board, National Research Council, *Transit Operation for Individuals with Disabilities*. (Washington, D.C.: National Academy Press, 1995), at p.12.

[54] *E.g.*, OC Transpo has indicated that it will consider eliminating community buses if it implements more accessible conventional bus services.

[55] TTC submission.

accessibility targets for buses and subways will not be achieved for at least another eleven to twelve years.[56]

GO Transit also faces barriers to accessibility, which, because of its close links to the TTC and other systems in the Greater Toronto area, has serious implications across the entire GTA. GO Transit reports accessible rail service at 29 of its 49 rail stations. None of the Go Transit buses were accessible in 1999, although by 2000, about 10% of buses were to be accessible. In its submission, GO Transit stated that there is "no funding" to make terminals accessible and has no current plans to modify the remaining nineteen inaccessible stations.[57]

Bus Services:

Accessible bus services are a function of the accessibility of the vehicles themselves, as well as the availability of low floor buses on all routes.

Several transit service providers have tested easy access, lift-equipped and low floor (fully wheelchair accessible) buses on their routes. Lift-equipped buses are reported to require heavy maintenance and most transit service providers in Ontario are gradually replacing current fleets of buses with low floor buses.

Low floor buses were reported to be available on several routes in most municipalities, but are more expensive to operate compared to standard high floor vehicles due to higher capital costs, operating costs and factors related to usage and frequency of use by passengers.[58] They are also more costly to repair. Lift-equipped buses also have

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56 The TTC is projecting fully accessible bus fleets and subway stations by 2011-12.

57 GO Transit submission to OHRC, 6 August 1999.

58 OC Transpo reports that low floor buses have about 80% of the capacity of standard high floor buses. Reduced capacity is being redressed by articulated buses. See "The Way Ahead: Becoming the Best of the Best" *supra* note 52 at 25.

high repair costs, and easy access buses, while preferable to standard high floor buses, are not wheelchair accessible.

As a result, many transit service providers are planning to buy only low floor buses in future. Currently, most of today's bus fleets range from a quarter to one-half accessible. For example, Burlington reports that about half of its fleet includes easier access and low floor buses, and OC Transpo reports that about half of its fleet will be low floor by 2003.[59] Markham's fleet is about 25% accessible and Mississauga is about one-third accessible.

In 1998, the TTC tested the natural gas-powered Orion VI true low floor buses (manufactured by the Mississauga-based Orion Bus Industries) along the Dufferin 29 route. The tests suggested that converting their fleet to low floors would increase yearly operating costs by $110 million since the low floors needed maintenance that was more frequent and expensive than conventional buses.

Reduced seating capacity in low floor buses would mean adding 180 buses to maintain current levels of service.[60] The TTC found the buses were not economical but planned to test 50 additional diesel low floor buses manufactured by New Flyer Industries of Winnipeg. More recently, the TTC has confirmed that the cost of new low floor buses on conventional fixed-route bus services is estimated at $110 million and is moving towards a completely accessible bus fleet with all future bus purchases being planned as low floor.[61]

The TTC reports that 339 of its fleet of 1473 buses consist of lift- equipped or low floor buses. Another 425 are easy access buses. Thirty-four of the TTC's 144 regular routes have accessible buses, and on these routes, the standard is at least 50% accessible

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59 *Ibid.* at 13.

60 Paul Moloney, "Low Buses Too Costly, TTC Told." *The Toronto Star.* September 14, 1998 p. E3.

61 See pleadings of the TTC in *Odell et al. v. TTC, supra* note 32.

buses during peak times and 100% accessibility in non-peak hours.[62] Future bus replacements are expected to be low floor accessible buses and a new route guide is being developed to include reference to the low floor accessible service.

GO Transit was relatively lower than others in levels of accessibility, reporting that only 10% of its fleet will have been made fully accessible by the end of 2000, with no targets for future increases in accessibility.

Subway:

The only subway registered in Ontario is run by the TTC.

Since 1995, when a subway crash resulted in highly publicized fatalities, the TTC reports that capital spending has been increased to replace or upgrade aging equipment and infrastructure in the subway system. This has increased pressure on a system that was already straining to make needed capital improvements. Nevertheless, despite the increased funding that had to go towards these general safety features, the TTC also states that it has increased capital spending to accommodate greater number of persons with disabilities on conventional routes during this same period.[63]

The TTC subway car fleet is accessible to customers who use mobility devices. About half the fleet is comprised of T-1 cars, which have wide doors, no center poles (which block mobility) and flip-up seats with wheelchair/scooter tie downs.

Subway stations were reported to have brightly-coloured tactile markings and tactile wayfinding tiles to assist in customers safety for those with sight impairment. Designated waiting areas have increased lighting, tactile markings and information markings in Braille, as well as emergency telephone connection to the collectors' booth.

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62 Telephone interview held with TTC staff on 16 October 2000.

63 See pleadings of the TTC in *Odell et al. v. TTC, supra*, note 32 at para. 17.

Upgraded public announcement loudspeakers improve communications particularly for the hearing-impaired. Signs with high-contrast lettering and pictograms improve communications and assist customers with limited reading capabilities and visual disabilities. Other accessible features include powered doors and wider turnstiles.

Despite these positive developments, given that the self-described "backbone" of the TTC is its subway, it is disheartening that only ten of its sixty-nine stations are or will have been made fully accessible by the end of the year 2000.[64] Even by 2004, only twenty-eight stations will be accessible, less than half the entire system. Moreover, the fact that the bus system is so closely integrated with the subway means that the inaccessibility of large areas of the subway system has repercussions far beyond the subway itself to the accessibility of the entire service.

The TTC has advised that if the Olympic Toronto bid is successful, it will have to change is plans to update stations from residential areas to downtown areas that will be heavily used during the Olympics. It was not clear whether this would impede the plans for fully accessible subway stations by the stated date of 2011-2012.

3.4.5 Integrated and Combined Systems

Several transit service providers have responded to the need expressed by public and service organizations to coordinate, combine and integrate transit services across different regions or even within regions. The Hamilton "family of services approach" is one approach to combining or rationalizing services with a region. The mix of services offering different choices and enabling trips to be made without booking several days in advance has reportedly resulted in improved services and a more efficient program in Hamilton and in other areas such as Markham and London.

Within regions, several service providers have gotten involved in CTAPs. Burlington has launched a CTAP, funded by the government, to partner with the Red Cross, a hospital

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[64] That is, with elevators between street, subway platform and bus platforms.

and the regional paratransit service to develop a demonstration project for persons with disabilities.

Horizontal integration of services across areas or services between areas has also been reported. In August 2000 the York Region Transit Implementation Project announced public consultations on the integration of five municipal conventional transit systems and seven special needs operations into a single system. York region reported strong public support for the combination of services into a single system in that Region.[65] The GTSB will also be seeking to achieve efficiencies in its planning and delivery of transit services for the GTA.

3.4.6 Paratransit Services

Even where the accessibility of conventional transit systems has been maximized, there will always be those who are unable to use it. Paratransit services will always be essential to ensuring the accessibility of transit services.

A 1993 report identified operating costs for specialized transportation for the entire Province to be about $21 million per annum.[66] By 1999, this figure was less than the budget for Wheel-Trans in the City of Toronto alone.

A brief summary of the paratransit services offered by each survey respondent is set out below for ease of reference:

- **Hamilton's** family of services approach combines wheelchair accessible van service providing door-to door service with contracted taxi /livery service providing door-to-door services. Taxi scrip services provide discounted coupons for purchase of commercial taxi services and accessible low floor buses on regular bus routes

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65 "Notice of Public Consultation Centres" -York Transit Implementation Project, Region of York (Toronto: August 2000), citing a 70% support for integration.

66 *Specialized Transit Services Fact Book, supra* note 30.

provide services to persons in wheelchairs and easier access to ambulatory disabled passengers.

- **Kingston** Access Bus (K.A.B). is a specialized bus service established in 1967 to provide transportation for persons with physical disabilities.
- **Kitchener's** Project Lift is a paratransit service providing door-to-door service for individuals with special needs.
- **London's** "Community Bus" service is available on routes heavily populated by seniors and persons with mobility disabilities. It operates during the off peak periods and takes patrons to medical facilities, hospitals, downtown and shopping areas.
- **Markham** Mobility Bus service has operated since 1983 and is supplemented by a connector fixed bus route and a taxi scrip service.
- **Mississauga** referred to Peel Transhelp in its submission, but did not report its own paratransit services.
- **Ottawa-Carleton's** OC Transpo has a paratransit service and includes three Communibus routes.
- **Niagara's Chair-A-Van** is an alternative to conventional transit and provides quality transportation in an efficient and cost-effective manner to members of the disability community.
- **Peterborough's** Handi-Van is a parallel service that exists for persons with physical disabilities.
- **St. Catharines'** Transit has initiated the Adult Accessibility Project in partnership with the St. Catharines' Association for Community Living to encourage people with disabilities to learn to use the public transit system and build their confidence for independent travel by relying on the bus operators to act as facilitators when necessary.
- **Timmins**' Handi-Trans provides services to residents who are unable to use conventional transit services.
- The Town of **Whitby** funds the operation of Whitby Handi-Transit. It provides a demand responsive door-to-door service to the residents of Whitby who cannot access regular transit services either permanently or temporarily due to disability.

- **Toronto's** Wheel-Trans provides door-to-door accessible transit service by Wheel-Trans buses or contracted accessible and sedan taxis. Spontaneous door-to-door service dedicated to short-term trips within a specified area was recently introduced into high-service demand areas.

Access to paratransit services is generally limited in Ontario to patrons who are registered and therefore meet pre-established eligibility requirements. Criteria for eligibility vary across the province, with some specialized services offering paratransit service to ambulatory or temporarily disabled persons. Some systems also provide services to frail seniors. Others services are more restrictive. Registration fees and fares vary significantly across the province.[67] Inconsistencies in criteria were also apparent in terms of assessment. The TTC has the most rigorous program, with an in-person interview and extensive, detailed criteria. In 1996, the TTC sought to address the issues of eligibility and high unaccommodated ride rates by restricting access to costly paratransit systems through tighter eligibility criteria.[68] It recommended new criteria for determining eligibility from its Advisory Committee on Accessible Transport, which recommended the following:

> *An individual's need to accessible transit is based upon an individual's level of physical functional mobility in the home, within the area immediately surrounding the home and in the community at large as well as permanency of disability. Eligibility is not based on particular disabilities.*[69]

The resulting changes to the criteria in 1996 involved much more elaborate screening processes and an in-person interview (as opposed to a paper-only application) in the

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[67] For example, some transit service providers impose one-time only registration fees, while others have an annual fee.

[68] Although the province used to set out basic eligibility requirements for paratransit users, most of this responsibility has been delegated to transit service providers.

[69] See pleadings of the TTC in *Odell et al. v. TTC*, *supra*, note 32, at para. 21.

TTC. Ottawa-Carleton appears to be planning for more rigorous selection criteria as well.

Levels of access for different types and severities of disability vary. Persons with mental disabilities (that is, who suffer from cognitive disabilities alone) cannot register for Wheel-Trans. There are also restrictions on use by persons with temporary disabilities. However, the St. Catharines Transit Commission advised the OHRC of its Adult Accessibility Project, which is being piloted for persons through the Community Living program to build confidence for independent travel for patrons, including those with cognitive/developmental disabilities. Other transit service providers permit use by persons with temporary disabilities.[70] Persons who are disabled but ambulatory cannot be registered in Toronto unless they are dependent on some type of equipment, such as a cane or walker.

There are also variances in booking times that are available or required.

Eligibility criteria for paratransit services are generally based upon the level of physical functional mobility in the home, within the area immediately surrounding the home, in the community at large, as well as permanency of disability. Eligibility is not based on particular disabilities, although the TTC excludes persons with mental disabilities from its Wheel-Trans program. The courts have upheld this on the ground of cost.[71]

To conclude, the variances in access to paratransit services across the province raise human rights issues. In particular, lack of access to transit services for persons with mental disabilities is of great concern.

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70 *E.g.*, Whitby.

71 See *Cannella v Toronto Transit Commission*, *supra* note 5 at para. 27.

PART IV. SUMMARY AND CONCLUSIONS

4.1 KEY ISSUES

In summary, the results of the Survey indicate that, while transit services providers are aware that there are human rights issues surrounding access, and progress is being made towards a fully accessible, integrated transit system, a great deal remains to be done. The lack, in many cases, of up-to-date plans to resolve issues of access and inclusion, as well as of standards and benchmarks, is likely to hamper progress. As well, the exclusion of persons with certain types of disabilities, such as temporary disabilities and mental disabilities, from access to paratransit raises human rights issues. There are also special concerns relating to the Greater Toronto Area.

4.1.1 Legal Standards

Under the *Code*, persons with disabilities, older persons, and families with young children have a right to equal treatment in the provision of public transit services. As part of this, human rights laws create a right to accommodation with dignity. Providers of public transit have a duty to design and develop transit systems in such a way as to maximize accessibility, and to remove barriers to accessibility where they exist. This may include integration of conventional systems, as well as the development and maintenance of paratransit systems.

It should be emphasized that the standard for the duty to accommodate is a high one. The factors to be considered in assessing undue hardship are costs, outside sources of funding, and health and safety. Costs will be considered to amount to undue hardship if they are quantifiable, shown to be related to the accommodation, and so substantial that they would alter the essential nature of the enterprise, or so significant that they would substantially affect its viability.

The duty to accommodate patrons with disabilities is not a voluntary or temporary duty. It is an ongoing legal duty under ss.1, 11 and 17 of the *Code*. The provisions regarding

special programs cannot be used as a defense in place of a service provider's *responsibility to accommodate disability* short of undue hardship. Paratransit programs cannot be viewed as special programs, or as a complete response to the duty to accommodate. Rather, they are one aspect, along with the integration of conventional systems, of the duty to accommodate to the point of undue hardship.

4.1.2 Planning

Despite the importance of basic principles of accessibility, few survey respondents reported that they had objectives of *both* full accessibility and integration. While some transit service providers reported plans for fully accessible systems, others reported plans for only partial accessibility over time. Others had none at all. Many planning tools are over seven years old, and it is apparent that transit service providers should update them to ensure that they reflect current fiscal and operational realities.

Without basic objectives, it is not surprising that service levels and accessibility vary considerably from area to area across the province. The lack of comprehensive planning or goals is an obvious starting point for transit service providers.

All transit service providers should have plans for how they intend to deal with the human rights issues raised by the Survey. Plans should include clear goals and current plans to achieve full accessibility. From the OHRC's perspective, full accessibility includes both (1) a highly integrated conventional system and (2) a specialized paratransit system. If eligibility criteria for paratransit services are restrictive, care should be taken to ensure that persons with disabilities are not also excluded from the conventional service. Municipalities with inaccessible conventional systems may have to broaden access to their paratransit systems.

Plans should be regularly updated, and include clear timelines for implementation. There should be accountability for meeting the plans' goals, for example, by including them as part of an annual business planning process, with accountability and

performance measures approved and reviewed by municipal councils or other governing bodies.

4.1.2 Standards

Standards for service levels will be more likely to be implemented and will be enforceable only with legislation. The American experience with the *Americans with Disabilities Act* indicates the strong positive influence of legislated standards for service levels. In the U.S., following the passage of the ADA, there have been real improvements for persons with disabilities in the area of public transit.

The government should consider the introduction of minimum legislative standards, similar to those in the ADA, to ensure basic levels of service at least for the following areas:

- High accessibility standards for new vehicles (purchased or leased) and for remanufactured vehicles.
- The scope of paratransit services should be extended to the same days and hours as fixed-route services and should cover an area comparable to that of fixed-route services.
- Restrictions on the number of trips a person can make, waiting lists, and other practices that limit the accessibility of paratransit services should be prohibited.
- Providers with overlapping services areas should offer coordinated paratransit service.

4.1.3 Access To Paratransit Services

The survey revealed material variations in the levels of services provided in Ontario. Some authorities restrict access to paratransit for ambulatory persons with disabilities,

while some are less restrictive. [72] Some authorities allow temporarily disabled persons to use their paratransit services, while others do not.[73]

The lack of access to transit services for persons with mental disabilities is a matter of great concern to the OHRC. The recent *Cannella* decision may close the door on the issue of whether attendants are required, but it does not obviate the need for other accommodation measures for persons with mental disabilities.

Transit service providers should consider persons with temporary and permanent disabilities as well as the aged when establishing criteria for paratransit users. Specialized services for persons with mental disabilities should also be considered.

In addition, the financial cost of registering for paratransit services varies significantly from region to region. Further, registration fees for paratransit services (and no other part of the transit system) are *prima facie* discriminatory. They are justifiable only if it can be shown that the cost to the transit service provider (for the entire budget of the service provider - not a particular program) constitutes an undue hardship. Fares should either be structured so that *all* transit users pay to reflect the length or cost of the trip, or a flat fee for all users.

4.1.4 Region Specific Issues

4.1.3.1. GREATER TORONTO AREA

In the Greater Toronto Area, it is important to consider the combined impact of the limited accessibility of the conventional systems of the TTC and GO Transit and the restrictive paratransit system. These factors have created a gap for those who do not qualify for Wheel-Trans but have difficulties using the conventional system. The TTC projects that its conventional system will not be substantially accessible until 2011-12.

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[72] The Hamilton Street Railway Company, for example, appears to offer more flexibility than the TTC. The TTC's criteria operate such that persons who have disabilities but are ambulatory cannot use Wheel-Trans unless they are dependent on some form of equipment, such as a cane or walker. This might be compared with the OC Transpo paratransit service where 70% of patrons are ambulatory.

As a result, during this eleven to twelve-year period, large portions of the conventional transit system of the TTC will remain inaccessible, while access to Wheel-Trans has been narrowed.[74] Transitional or interim measures are needed to bridge the gap until the conventional system is accessible, *e.g.,* by enhancing the capacity of Wheel-Trans until 2012 to accommodate persons who have difficulties accessing the conventional system, but who are not currently eligible for the paratransit system.

As well, the pace of upgrading GO Transit and the TTC conventional systems should be accelerated, either through enhanced municipal funding or provincial one-time only subsidies.

4.2 CONCLUSIONS

Many transit service providers are struggling today to provide basic services and to ensure safety, while trying to find ways to increase ridership. Accessibility initiatives and service integration are discernable trends, but slow moving ones.

While significant efforts have been made to improve accessibility, much more needs to be done across the province. For example, GO Transit's plans for accessibility are, at present, simply inadequate, although the anticipated new plans from the GTSB may improve this assessment. As noted above, the TTC should consider at least interim measures to handle the current lack of accessibility in large parts of its system.

Municipal and provincial commitments to accessibility need to be more strongly encouraged. There are several initiatives that are already available or have already been proposed by others: for example, the Government's current CTAP is a good idea that needs to be expanded to make it more of a spark to generating coordinated community programs that focus on accessibility. More funding is not the only option. For example, the acquisition of low floor buses is a significant expenditure, and the

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[73] For example, Whitby allows persons with temporary disabilities to access its paratransit services.

[74] TTC submission; see also Dunphy, "Barriers falling one ramp at a time" Toronto Star A-1, A-6 (September 17, 2000).

provincial government could waive sales tax on the acquisition of low floor buses for all municipalities as an incentive to accelerating accessibility planning. This option has been proposed by transit services providers in the past and is worth careful consideration or reconsideration.

In the longer term, the need for accessible transit raises fundamental issues about the society we live in. Access is a priority for individuals who have disabilities and for their families. But is also a priority for our aging population, students and for parents with small children. These are genuine needs, and responsible public service providers have a legal obligation to meet these needs whether or not those needs are shared by a "majority" of the population. At the risk of stating the obvious, human rights principles are especially important for persons who, because of personal characteristics, have difficulty achieving equality precisely because they are not the majority.

The *Code* and OHRC policy place a duty on service providers to accommodate the needs of their patrons on the grounds of disability, age and family status. Persons with disabilities should not have to bear the costs of their accommodation needs. *Eldridge* set a clear standard for an interpretation of equality rights under section 15 of the Charter that also imposes special obligations on public facilities that have a particular relevance to this issue. The case is thus particularly relevant to policy changes aimed at improving the accessibility of public transit. Universal design and shared accessibility guidelines for public transit are another option, failing legislated standards. The Commission notes with interest the "Joint Accessibility Guidelines" developed by Markham along with Richmond Hill and Vaughan, which will ensure that the built physical form is universally accessible.

Applying *Eldridge* and the human rights principles of integration and respect of dignity, the goal of any transit system should be to integrate its riders with disabilities into a primary transit system accessible to all patrons. For patrons who cannot access even a highly

integrated primary or conventional system, a parallel system should provide service in a manner that is least intrusive and most respects dignity.

The Commission views this Paper as a first step in addressing issues of accessibility in transit services. It will continue to seek ways to promote discussion of human rights issues surrounding transit services, and support the development of accessible and integrated transit services in the province of Ontario. Written submissions on the issues raised in this paper are welcomed, and will be accepted until June 30, 2001.